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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TOLGA ORAL, SERGEI R. LANDAR, and
ANDREW L. SCHIRMER

Appeal 2016-002299
Application 11/608,682¹
Technology Center 3600

Before BIBHU R. MOHANTY, NINA L. MEDLOCK, and
JAMES A. WORTH, *Administrative Patent Judges*.

WORTH, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE²

Appellants filed a Request for Rehearing (hereinafter “Request”) dated December 11, 2017, seeking reconsideration of our Decision, mailed

¹ According to Appellants, the real party in interest is International Business Machines Corporation (Appeal Br. 2).

² Our decision refers to the Appellants’ Appeal Brief (“Appeal Br.,” filed June 15, 2015) and Reply Brief (“Reply Br.,” filed Dec. 16, 2015), and the Examiner’s Final Office Action (“Final Act.,” mailed Jan. 14, 2015) and Answer (“Ans.,” mailed Oct. 16, 2015).

October 10, 2017 (“Decision”), in which we affirmed the rejection of claims 1–17 under 35 U.S.C. § 101.³

ANALYSIS

The Court in *Alice* emphasized the use of a two-step framework for analysis of patentability under 35 U.S.C. § 101:

First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us?” To answer that question, we consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application.

See Alice Corp., Pty. Ltd. v CLS Bank Intl, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)).

In the Decision, we determined that claims 1–17 were directed to the abstract idea of scheduling events on a calendar, which is a method of organizing human activity, and that the remaining limitations do not add significantly more to transform the abstract idea into patentable subject matter. Decision 4–6.

Appellants argue that the panel erred in stating: “We agree with the Examiner that Appellants have not tied the case law discussion to specific aspects of the claims or Specification.” Request 4 (quoting Decision 4). Appellants argue that the panel overlooked the following argument in the Reply Brief:

³ Although not at issue, the Decision also reversed the Examiner’s rejections of claims 1–7 under 35 U.S.C. § 102, and of claims 8–17 under 35 U.S.C. § 103.

A plain viewing of Figure 2 will illustrate a networked computing arrangement in which a specific logic block of a module entitled “unprocessed invitations processing” is coupled to an event scheduling application. Clearly, such an arrangement is not “generic”. Further, Figure 3 of Appellants' originally filed specification reveals a very particular flow chart in which a very particular and detailed computer driven process is shown-hardly generic computing. Examiner argues that the foregoing “does not provide any specialized computer instructions for implementing the claimed invention” and thereafter provides some sort of subjective hypothetical not present in the evidence of record. Yet, such a statement is a blatant mis-statement of truth and Examiner’s hypothetical-not evidentiary. In fact, Figure 3 under no reasonable circumstances can be considered “generic” and the very particular process steps of identifying a time slot for an event scheduling request, retrieving unprocessed events and responding to a resultant conflict is shown.

Request 3 (quoting Reply Br. 3). Appellants contend that Figures 2 and 3 of the Specification “demonstrably illustrated a system and process far beyond a mere generic arrangement of computing components.” *Id.* (citing Reply Br. 3–4).

However, page 5 of the Decision specifically cited Figures 2 and 3 of the Specification in agreeing with the Examiner’s findings that the Specification does not provide anything more than conventional computer equipment and programming techniques. Decision 5 (citing Spec. ¶¶ 23–25, Figs. 2–3; Ans. 8–10 (citing Spec. ¶¶ 20–21, Figs. 2, 3)). The Decision reviewed the Examiner’s finding that these portions of the Specification show a generic computer platform and a generic flow chart, with routine and nominal computer functions for loading data and performing processing, but without specific computer instructions for implementing the claimed

invention. *Id.* (citing Ans. 10; Final Act. 6). The Decision found, *inter alia*, that “the Specification . . . does not offer a specific implementation.” *Id.*

For ease of reference, we reproduce Figures 2 and 3 of the Specification:

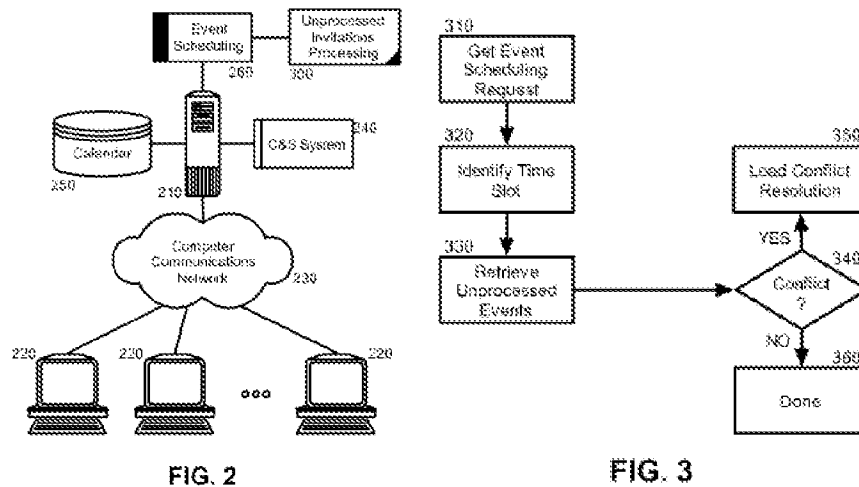


Figure 2 is “a schematic illustration of a C&S data processing system configured for invite processing user interface configured for event scheduling conflict management and resolution for unprocessed” events. Spec. ¶ 14. Figure 3 is “a flow chart illustrating a process for invite processing user interface configured for event scheduling conflict management and resolution for unprocessed events in a collaborative computing environment.” Spec. ¶ 15.

The Decision did not overlook or misapprehend any arguments in this regard. To the extent that Appellants are relying on a logic block in Figure 2 labeled “unprocessed invitations processing,” Request 3 (quoting Reply Br. 3), neither Figure 2 nor paragraphs 20 and 21 of the Specification offer a specific implementation for such processing. As such, Figure 2 restates the abstract idea without providing a specific implementation. To the extent that Appellants are relying on Figure 3 for such processing, Figure 3 and the accompanying discussion in the Specification do not provide any further programming steps. Rather, Figure 3 restates the abstract idea of “conflict

resolution” for “unprocessed events,” in flow chart form, without providing a specific implementation. In this connection, the Decision did not err in finding that the Specification does not provide a specific implementation for the abstract idea. The Decision distinguished the claims and Specification from that of *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), finding that the Specification here “addresses a pre-internet problem that is not specific to computer networks” and “does not provide anything more than conventional technology to solve the problem of avoiding unscheduled meetings on a calendar” Decision 5.

Appellants also contend that the panel overlooked the following argument in the Reply Brief:

It is to be noted that in Internet Patents Corporation v. Active Network, Inc., the Federal Circuit found that an innovative concept reflected in a claim rejected under 35 U.S.C. § 101 must be restricted by the claim language itself in terms of how the innovative concept is achieved so as to realize patentable subject matter. In Internet Patents, the claim language lacked such a restriction as to how the innovative concept is achieved, and therefore, the claims in Internet Patents were rightfully rejected as being directed to non-statutory subject matter. However, Applicants’ claims, unlike the claims of Internet Patents indeed are restricted as to how the innovative concept of “event scheduling conflict management” is achieved. Accordingly, with the jurisprudence of Alice and Internet Patents in mind, after taking all of the claim recitations into consideration, Applicants’ believe claim 1 recites statutory subject matter under 35 U.S.C. § 101.

Request 4–5 (quoting Reply Br. 5). The Decision did not overlook or misapprehend any arguments in this regard. Appellants argue that the claims are restricted to “how” the “event scheduling conflict management is achieved.” *Id.* As above, the Decision found that “the Specification . . .

does not offer a specific implementation.” Decision 5. The Specification and claims merely restate the abstract idea without providing a specific implementation or computer instructions, as discussed above. *See id.* As such, the claimed invention suffers from a similar deficiency as that in *Internet Patents*, contrary to Appellants’ assertion. *See Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015) (“mechanism for maintaining the state is not described”).

To the extent that Appellants are arguing that the claimed invention is patentable because it does not “pre-empt” an entire field (*see* Request 5), a showing of pre-emption is not required for a determination that an idea is directed to non-patentable subject matter. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.”).

The Decision further concluded that the additional limitations, which include “proposing,” “identifying,” “prompting,” “listing,” “selecting,” “determining,” taken individually, or as a whole, do not add significantly more to take the invention out of the realm of the abstract because they are directed to the same abstract idea. Decision 6. In this connection, the panel has considered Appellants’ arguments and concludes that the Decision did not overlook or misapprehend any arguments in concluding that the claims are directed to an abstract idea without significantly more.

DECISION

In view of the foregoing, the panel has granted Appellants’ Request to the extent that we have reconsidered our Decision in light of Appellants’

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Request. But we are not persuaded that we misapprehended or overlooked any points of law or fact in rendering our Decision; therefore, we deny Appellants' request to make any changes therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

DENIED